

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:
KERR, JAMES W.
 Corporate Patent Officer
 Labatt Brewing Company Limited
 303 Richmond Street
 P.O. Box 5050
 LONDON, Ontario
 Canada, N6B 2H8

PCT

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**
(PCT Rule 43bis.1)

Date of mailing (date/month/year)	14 January 2005 (14-01-2005)
--------------------------------------	------------------------------

Applicant's or agent's file reference
6.30.3260PCT

FOR FURTHER ACTION
 See paragraph 2 below

International application n°
PCT/CA2004/001580

International filing date (date/month/year)
 27 August 2004 (27-08-2004)

Priority date (date/month/year)
 27 August 2003 (27-08-2003)

International Patent Classification (IPC) or both national classification and IPC
B65B 43/26

Applicant **LABATT BREWING COMPANY LIMITED ET AL**

1. This opinion contains indications relating to the following items :

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/
Commissioner of Patents
Canadian Patent Office
Box PCT, Ottawa/Gatineau K1A 0C9

Facsimile No. (819) 953-9538

Authorized officer

Emilie Clement (819) 953-8641

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/CA2004/001580

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language which it was filed, unless otherwise indicated under this item.

This opinion has been established on the basis of a translation from the original language into the following language __, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

a sequence listing

table(s) related to the sequence listing

b. format of material

in written format

in computer readable form

c. time of filing/furnishing

contained in the international application as filed.

filed together with the international application in computer readable form.

furnished subsequently to this Authority for the purposes of search.

3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments :

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CA2004/001580

Box No. V reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1 to 4	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1 to 4	NO
Industrial applicability (IA)	Claims	1 to 4	YES
	Claims		NO

2. Citations and explanations :

Reference is made to the following documents:

- **D1:**US 3,967,434 (6 July 1976)
- **D2:** US 6,038,789 (21 March 2000)

The subject-matter of claims 1 to 4 does not involve an inventive step in the sense of Article 33 (3) PCT.

Document D1, which is considered to be the most relevant prior art with respect to independent claims 1 to 4, teaches a method for packing articles into a carton, said method comprising the steps of:

- manipulating a carton flat having flaps adapted to seal an opening into the carton into an erected open condition;
- transporting said carton to a packing station;
- filling said carton by inserting a complement of articles through said opening into said carton;
- manipulating said flaps so that they overlie the articles in the carton; and
- securing the flaps together to seal the carton.

Moreover, document D1 teaches a packaging machine adapted to receive a carton flat having sealing flaps, erect the carton flat into an open carton, fill and seal the open carton, the machine comprising:

- a means for erecting the carton blank into a carton having an opening, closurable by said sealing flaps for the insertion of articles;
- means for filling said carton with a complement of articles;
- means to manipulate said flaps to overlie said articles; and
- means to secure said flaps together to seal said carton.

The distinguishing feature of claims 1 to 4 regarding the disclosure of D1 is the moistening of any warped closure flaps of said carton in order to overcome distortion by dehydration.

Hence, the problem to be solved by the present invention may be regarded as how to negate the distortion of a paperboard flap caused by dehydration. It is held, however, that it would have been obvious for one skilled in the art at the time of the invention facing this problem to contemplate applying sufficient moisture to the flap in order to cause re-hydration thereof since it is known in the art, as taught, for example by D2, to control the curl of a paperboard, caused by dryness, by using steam treatment and/or moistening of the paperboard.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CA2004/001580

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted :

The claims of this application lack conciseness as required by Article 6 PCT because the application contains three independent claims in the method category. Thus, these claims are not concise as required by Article 6 PCT since each of them specifying a method for moisturizing a distorted closure flap of a carton. In this application, it would seem appropriate to have only one independent claim in the method category.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/CA2004/001580

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made :

Claim 2: The term "distraction" as would be understood by one skilled in the art, would be akin to the definition listed in the Merriam-Webster Dictionary: "to draw or direct (as one's attention) to a different object or in different directions at the same time". However, it appears that the term the applicant intended to put forth is "distortion" which, according to the definition in the Merriam-Webster Dictionary, is "the quality of twisting out of natural, normal, or original shape or condition" and is therefore more appropriate to the context.

Claim 3: The expression "wherein" is incorrect and should read "into". Also, there should be a comma before "moisturizing" for better clarity of the claim.

Claim 4: The term "flats" in the expression "means to secure said flats together..." should read "flaps".

In the description (page 6, line 16): it should read "sections, 10, 11, 12 and 13" rather than "sections, 10, 22, 12 and 13" to be consistent throughout the application. Reference character (22) refers to the erection or set-up station.

In the description (page 9, lines 11, 19 and 20) "carton 100" should read "carton 27"; reference character (100) does not appear in the drawings.

The same features, when denoted by reference characters, shall, throughout the application, be denoted by the same characters. For example, on page 6 the bottom wall section is referred to by (11) while on page 7 line 3 the securing flap is also referred to by (11). Similarly, on page 6, the bottom wall section is referred to by (13) while on page 7 line 6 the securing flap is also referred to by (13).